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No. 90-519

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JAY D. HIRSCH,

Petitioner,

– against –

OAKELEY VAUGHAN UNDERWRITING LIMITED, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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COUNTERQUESTION PRESENTED

Should this Court review a case dismissed on the ground of *forum non conveniens* where the facts found below amply support the dismissal and petitioner's only claim is that an American plaintiff may *never* be deprived of his right to sue a foreign defendant in an American forum?

STATEMENT PURSUANT TO RULE 29.1

Respondents the Society of Lloyd's and the Corporation of Lloyd's have no parent or subsidiary corporations within the meaning of Rule 29.1 of the Rules of the Supreme Court of the United States.

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents the Society of Lloyd's, the Council of Lloyd's and the Corporation of Lloyd's ("Lloyd's" or the "Lloyd's Respondents") respectfully ask that this Court deny Mr. Hirsch's petition for a writ of *certiorari* that seeks review of the opinion of the United States Court of Appeals for the Fifth Circuit, *Hirsch v. Oakeley Vaughan Underwriting Limited et al.*, May 31, 1990, No. 89-2563 (unpublished slip opinion). A-1-6.[1],[2]

[1] Refers to the Appendix to the *Petition for Writ of Certiorari.*

[2] Respondents Oakeley Vaughan and Company Limited, Charles A. B. St. George, Mark E. P. St. George, Edward St. George and James St. George have

(Footnote continued)

PRELIMINARY STATEMENT

If ever there was a case in which it was appropriate to send an American plaintiff's claims to England on *forum non conveniens* grounds, it is this case.[3] Petitioner Hirsch has conceded as much; he has not really challenged the decisions of the courts below on the ground that they misapplied existing law. Rather, he asks this Court to enunciate a rule that an American plaintiff's choice of an American forum may never be denied when the defendant is foreign.

In the trial court, Mr. Hirsch litigated and briefed the issue of personal jurisdiction over the Lloyd's respondents at length, but he did not utter a single word of opposition to Lloyd's motion to dismiss on *forum non conveniens* grounds. The trial court, perceiving that the issue of jurisdiction was factually complex and hotly disputed, turned to the *forum non conveniens* motions, where the facts were undisputed and pointed without exception to England as the most convenient forum. England provides an alternate forum and, in fact, other similarly situated Americans are suing Lloyd's in England; all of the pertinent witnesses and documents are there; Mr. Hirsch's claims against Lloyd's are governed by English law; and England has a strong interest in the outcome of the dispute, since it involves regulatory and disciplinary control over the insurance market at Lloyd's. In Texas, there is only Mr. Hirsch.

Apparently unable to distinguish between jurisdiction and *forum non conveniens*, Mr. Hirsch continued to urge, before the Court of Appeals, that he had been solicited in Texas to become a Member at Lloyd's and had signed some of his agreements

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reviewed and agreed with the position taken by Lloyd's on the issues presented by the Petitioner and therefore join in this response without filing separate briefs in opposition.

[3] The Court of Appeals for the Fifth Circuit did not even publish its opinion, finding, pursuant to Local Rule 47.5, that the case raised no important new issue but was "merely decide[d]. . .on the basis of well-settled principles of law." A-1 n.1.

with Lloyd's in Texas. On these grounds, he alleged that his choice of a Texas forum should not be denied, despite the overwhelming evidence that the public and private factors pertinent to *forum non conveniens* pointed entirely to the English forum.

The Court of Appeals agreed with Judge Black below, holding that "[t]he logistical scale tips strongly toward England." A-5. It emphasized that "[t]his lawsuit aims at the heart of the unique self-regulatory mechanism within Lloyd's, which is a product of complex English legislation." A-6.

Petitioner Hirsch now comes to this Court to argue, in essence, that his status as an American citizen should have been sufficient to overcome all of the undisputed convenience factors found by the courts below to point to England. In an effort to create a novel issue, he alleges that this Court has thus far neglected to set forth specific rules for the exact calculation of the "substantial deference" that is due an American plaintiff's choice of forum.

The Lloyd's Respondents submit that this Court has given ample guidance as to the principles that should inform the weighing of an American plaintiff's choice of forum on a case-by-case basis. And even if this Court were interested in expanding its guidance on the subject, clearly this is not the case in which to do so.

COUNTERSTATEMENT OF FACTS

Petitioner Hirsch has presented this Court with some 11 pages of facts. Virtually all of these facts pertain to the contacts between Mr. Hirsch and Lloyd's that led him to become a Member of Lloyd's – the initial solicitation in Texas made by Mr. Wilfred Sherman and others, the issuance by a Texas bank of a letter of credit provided to Lloyd's to secure Mr. Hirsch's liabilities as an Underwriter, and the signing in Texas of certain ancillary agreements between Mr. Hirsch and Lloyd's.* Whether Mr.

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* Refutation of the specific allegations in Mr. Hirsch's petition (Pet. 2-9) is not necessary to the *forum non conveniens* analysis; Lloyd's does not, however,

(Footnote continued)

Sherman acted for Lloyd's, or for the Oakeley Vaughan parties, or simply for himself (in hopes of a commission from Oakeley Vaughan), was hotly disputed below. It was this agency question, pertinent to the issue of personal jurisdiction, that the courts below saw no need to resolve. Instead, even after assuming Mr. Hirsch's version is the correct one, the courts below found that these contacts with the Texas forum were not relevant to the *forum non conveniens* issue.

The facts that are relevant are those surrounding Mr. Hirsch's claims against Lloyd's. In essence, he claims that the Society, Council and Corporation of Lloyd's were negligent in the performance of the regulatory and disciplinary duties imposed on them under the Lloyd's Acts 1871-1982.[5] Mr. Hirsch believes that Lloyd's knew, when it admitted him to membership, that the Oakeley Vaughan syndicates he proposed to invest in were in violation of the rules of Lloyd's and were in financial difficulties. There are issues between Mr. Hirsch and Lloyd's as to the extent of Lloyd's knowledge of such irregularities, the status of an investigation into them at the time Mr. Hirsch became a Member of Lloyd's, and the exact nature of Lloyd's obligations, if any, to disclose whatever information it had to Mr. Hirsch. From the date of his membership forward, there arise issues as to whether Lloyd's acted with sufficient promptness in discovering and then dealing with alleged irregularities in the conduct of the Oakeley Vaughan Syndicates. (*See, e.g.*, Pet. 6, 8-9; *see also* the "Points of Claim" in a pending English lawsuit by 39 other Lloyd's Members who were on the same syndicates for the same years as Mr. Hirsch, and who make similar claims. The Points of Claim are printed in the appendix to this brief.) Clearly, as the courts below found, all of the witnesses and documents pertinent to these claims are located in England.

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agree with these allegations, nor did the courts below make findings of fact that support them.

[5] *See Plaintiff's First Amended Original Petition*, included as an appendix to this brief.

Lloyd's is a 300-year-old institution, a market composed of individual investors banded together into syndicates to underwrite risks. Their liability is unlimited and several. Syndicates are formed and operated by Underwriting Agencies, which, through often-related Members' Agents, solicit prospective Members so as to increase the assets that secure their underwriting, hence the amount of business they can do. *See generally Edinburgh Assur. Co. v. R.L. Burns Corp.*, 479 F. Supp. 138, 144-45 (C.D. Cal. 1979), *aff'd in part and rev'd in part on other grounds*, 609 F.2d 1259 (9th Cir. 1982).

The Society of Lloyd's, governed by the Council of Lloyd's and assisted by the Corporation of Lloyd's, which is the Society's staffing arm, oversees this market of individuals underwriting risks. It makes rules or bylaws for its Members and enforces these, backed by disciplinary powers. Lloyd's is defined, structured and governed by the Lloyd's Acts 1871-1982, which give the Society's obligations to its Members and its self-regulatory powers the status of English law. *In re Insurance Antitrust Litigation*, 723 F.Supp. 464, 488 (N.D. Cal. 1989).

The Society, Council and Corporation of Lloyd's do no insurance business anywhere, and have no assets in the United States. Consequently, as the Court of Appeals explicitly found — and Mr. Hirsch does not now dispute — no judgment entered against the Lloyd's Respondents in a United States court could be enforced here. As the Court of Appeals put it, Mr. Hirsch's argument before that court that such a judgment could be enforced here is "totally conclusory and highly dubious." A-5. Mr. Hirsch has not even urged that argument to this Court.

It is these facts — witnesses and documents entirely in England, undisputed applicability of English law, English interest in the governance of the market at Lloyd's, and the unenforceability of a Texas judgment — that are pertinent to dismissal of Mr. Hirsch's claims under the doctrine of *forum non conveniens*.

REASONS WHY THE WRIT SHOULD BE DENIED

I. THE COURTS BELOW WERE CLEARLY CORRECT IN FINDING THAT MR. HIRSCH'S CLAIMS AGAINST THE LLOYD'S RESPONDENTS, SOUNDING IN ENGLISH LAW AND REQUIRING ALMOST EXCLUSIVELY ENGLISH TESTIMONY, BELONG IN AN ENGLISH FORUM.

The proper factors to be considered in any *forum non conveniens* analysis are well known. First, there must be an available and adequate alternative forum. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 n.22 (1981). Second, factors of public and private interest must be considered. Factors pertaining to the private interests of the litigants include "the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses . . . and all other practical problems that make trial of a case easy, expeditious and inexpensive." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947). "Factors of public interest" (*id.*) include "the administrative difficulties flowing from court congestion; the 'local interest in having localized controversies decided at home'; the avoidance of unnecessary problems in conflict of laws or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n. 6 (1981), *quoting Gilbert*, 330 U.S. at 509.

The Fifth Circuit's opinion followed applicable precedent to a tee. The court first found that England is an available alternative forum, as evidenced by the fact that "many of Hirsch's fellow underwriting members, including United States citizens, are presently pursuing a lawsuit in the High Court of Justice in London against these defendants." A-5. Neither here nor below has Mr. Hirsch "shown that he is unable to join that lawsuit or to commence his own lawsuit in England." *Id.* Mr. Hirsch's only response here is to complain of the "possibility of

anti-American bias" in an English forum (Pet. 23), a scurrilous and totally unsupported allegation.[6]

Next, the Fifth Circuit considered the "private interest" factors. It noted the district court's finding that all defendants (other than a bank involved only as a stakeholder) and all witnesses are English. Like the district court, the Fifth Circuit was skeptical that Mr. Hirsch, whose "contract with Lloyd's was executed in London and designated to be performed in England and [who] traveled to England for purposes of his transaction" would be seriously inconvenienced by trial in London. A-5, A-9-10.

The Fifth Circuit found that "(i)nsofar as Hirsch attacks the method by which Lloyd's oversaw the performance of underwriting agents such as Oakeley Vaughan, the documentation and witnesses must be in England." A-5. Mr. Hirsch does not challenge that finding, which the record amply supports. Allegations against the Lloyd's Respondents implicate the structure, organization and governance of Lloyd's. They charge the Lloyd's Respondents with failing to carry out duties required of them by Act of Parliament. If the case is to be tried in Texas, it will be necessary to have extensive testimony not only about Lloyd's but about complex questions of English law. It will also be necessary to have testimony as to who knew what at what point in time about Lloyd's investigation of Oakeley Vaughan, and whether documents such as the Chester Report could or should

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[6] Mr. Hirsch's argument that the courts below erred by not imposing "protective conditions" (Pet. 21-22) cannot stand as a challenge to availability of an English forum. Typically, the "conditions" imposed on a *forum non conveniens* dismissal are simply that defendants consent to suit in the alternative forum and waive any statute of limitations defenses that may have arisen since the commencement of plaintiff's action. Because Mr. Hirsch has never asked either the district or circuit court to impose any such conditions, those courts' failure to do so can hardly be termed error. In any event, the Lloyd's Respondents hereby stipulate, on the record, their amenability to suit in England and their waiver of any limitations defense that may have arisen since the commencement of this lawsuit, provided that Mr. Hirsch brings his English action within a reasonable period of time after his petition for *certiorari* is denied.

have been disclosed to Mr. Hirsch under English law. None of the persons likely to give testimony in these areas is resident in Texas, or even in the United States; they can all be found in England.

Mr. Hirsch cannot, and does not, seriously dispute the circuit court's conclusion that "(t)he logistical scale tips strongly toward England." A-5.

Discussion of the public interest factors is entirely absent from the *Petition for Writ of Certiorari*. This is not surprising, for in no sense can this case be described as a "local" dispute in Texas. It is centered entirely in England, and should not be inflicted on Texas courts and juries.

The district court's conclusion that England has a greater interest than Texas in this litigation was amply supported by its finding that "since the Lloyd's market is regulated by the United Kingdom, there is significant local interest in the English courts to resolve the issues in dispute." A-10. The record is undisputed that the Lloyd's Respondents' existence is chartered, and their conduct guided, by Acts of Parliament, and that the government of England has a vital interest in regulating the unique insurance marketplace that is Lloyd's.

The need to apply foreign law favors dismissal. *Piper*, 454 U.S. at 235 ("As we stated in *Gilbert*, the public interest factors point toward dismissal where the court would be required to 'untangle problems in conflict of laws, and in law foreign to itself.' "). The Fifth Circuit agreed with the district court that petitioner's lawsuit is governed by English law.[7] A-6. Both courts were

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[7] At several points in his petition, Mr. Hirsch appears to argue that the Fifth Circuit erred by supposedly reviewing the district court's decision *de novo* rather than applying an abuse of discretion standard. Pet. 13-15, 19, 23. That is just not so. *See* A-3 (Fifth Circuit states that it could "only overturn the district court's dismissal upon a showing of abuse of discretion"); A-4 ("The district court succinctly identified and applied those private and public factors as to which there might be any dispute").

(Footnote continued)

correct. As the Fifth Circuit found, and petitioner does not dispute, "(t)his lawsuit aims at the heart of the unique self-regulatory mechanism within Lloyd's, which is a product of complex English legislation." A-6. The application of the Lloyd's Acts to the complicated allegations set forth in Mr. Hirsch's complaint is a task that should be left in the first instance to the English courts.

Moreover, allowing these kinds of claims to be litigated anywhere other than England would raise the substantial possibility that inconsistent and conflicting results will flow from courts around the world on a matter of central importance to England. Most Members of Lloyd's are British subjects, but Members can also be found in more than sixty other countries, not just the United States. A result other than dismissal here would leave open the possibility of suits around the globe challenging the internal operating procedures of Lloyd's and the Lloyd's Respondents, when Parliament has spoken on that subject and litigation is progressing in British courts. Furthermore, as the Fifth Circuit found, it is "highly dubious" that Mr. Hirsch would be able to enforce a Texas judgment. A-5. Avoidance of inconsistent results and conservation of judicial resources weigh strongly in favor of dismissal and make all the wiser the view of the courts below that litigation in England, either as part of the already ongoing litigation raising essentially the same claims as Mr. Hirsch raises, or in a separate proceeding, is the best course.

In sum, *all* of the private and public interest factors point toward dismissal, save one: the fact that petitioner is an American. In various guises, one argument is all petitioner

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In any event, if the appellate court did apply a more rigorous standard than necessary, that could only have benefited Mr. Hirsch, and is not a proper ground for *certiorari*.

Moreover, Mr. Hirsch appears to have abandoned any claim that Texas law applies to his suit. He advances no such argument in his petition, and must therefore be taken as having accepted the Fifth Circuit's view that his dispute with Lloyd's is governed by English law.

makes: the lower courts should not have dismissed his lawsuit because he is American. As demonstrated below, the Fifth Circuit's decision in this case is not only not novel, it is in harmony with decisions of this Court and of other circuits, and raises no issue worthy of this Court's consideration.

II. THE APPLICATION OF THE DOCTRINE OF *FORUM NON CONVENIENS* BY THE COURTS BELOW TO A CLAIM BY AN AMERICAN PLAINTIFF AGAINST ENGLISH DEFENDANTS WAS BASED ON SETTLED LAW AND IS IN HARMONY WITH DECISIONS OF OTHER CIRCUITS.

Mr. Hirsch argues that the lower courts gave insufficient deference to his choice of forum and to his status as an American. He is wrong. Both the district court and the Fifth Circuit gave due consideration to Mr. Hirsch's citizenship and choice of forum, but found this single factor overwhelmingly outweighed by factors favoring dismissal.

Because Mr. Hirsch does not seriously challenge the findings of the courts below with respect to any of the other factors in the *forum non conveniens* analysis, this case does not present the theoretical question of how much deference an American plaintiff's choice of forum deserves. Here, because all other factors point toward dismissal, petitioner could succeed only if his choice of forum were entitled to absolute deference.

If accepted, Mr. Hirsch's argument would mean that no U.S. citizen's complaint could ever be dismissed on *forum non conveniens* grounds. While Mr. Hirsch is technically correct that this Court has never decided a case on all fours with his (Pet. 24), this Court (and many others) has squarely rejected his argument.

Both the district court (A-9) and the Fifth Circuit (A-4) recognized that while a plaintiff's choice of forum should be accorded substantial weight, that choice is not dispositive. That was squarely in accordance with this Court's teaching. As this

Court recognized in *Piper*, while a foreign plaintiff's choice of forum deserves less weight than a citizen's choice,

> [a] citizen's forum choice should not be given dispositive weight, however. Citizens or residents deserve somewhat more deference than foreign plaintiffs, but dismissal should not be automatically barred when a plaintiff has filed suit in his home forum. As always, if the balance of conveniences suggests that trial in the chosen forum would be unnecessarily burdensome for the defendant or the court, dismissal is proper.

454 U.S. at 256 n. 23 (citations omitted).

As this Court recently reemphasized, the "list of considerations to be balanced [in a *forum non conveniens* analysis] is by no means exhaustive, and some factors may not be relevant in the context of a particular case." *Van Cauwenberghe v. Biard*, 486 U.S. 517, 528-29 (1988). "[T]he district court is accorded substantial flexibility in evaluating a *forum non conveniens* motion [citation omitted], and 'each case turns on its facts.' " *Id.* at 529, quoting *Williams v. Green Bay & Western R. Co.*, 326 U.S. 549, 557 (1946). Any attempt to spell out in advance the precise amount of deference due a plaintiff's choice of forum in all cases would thus be a futile endeavor.

However, courts no longer accord "talismanic significance to the citizenship or residence of the parties." *Alcoa Steamship Co. v. M/V Nordic Regent*, 654 F.2d 147, 154 (2d Cir. 1980) (en banc). This is hardly the first circuit court opinion upholding dismissal of a citizen's complaint on *forum non conveniens* grounds. *See, e.g. Forsythe v. Saudi Arabian Airlines*, 885 F.2d 285 (5th Cir. 1989); *Pacific Employers Ins. Co. v. M/V Capt. W. D. Cargill*, 751 F.2d 801 (5th Cir.), *cert. denied*, 474 U.S. 909 (1985); *Overseas Nat'l Airways v. Cargolux Airlines Int'l, S.A.*, 712 F.2d 11 (2d Cir. 1983); *Cheng v. Boeing Co.*, 708 F.2d 1406 (9th Cir.), *cert. denied*, 464 U.S. 1017 (1983); *Nalls v. Rolls-Royce Ltd.*, 702 F.2d 255 (D.C. Cir.), *cert. denied*, 461

U.S. 970 (1983); *Pain v. United Technologies Corp.*, 637 F.2d 775 (D.C. Cir. 1980), *cert. denied*, 454 U.S. 1128 (1981); *Calavo Growers of California v. Belgium*, 632 F.2d 963 (2d Cir. 1980), *cert. denied*, 449 U.S. 1084 (1981); *Alcoa Steamship Co., supra.*

Contrary to Mr. Hirsch's argument (Pet. 25), there is no "confusion among the circuits as to the weighing process" in a *forum non conveniens* analysis. Each case, as this Court has said time and again, turns on its own facts. In each case, "the ultimate inquiry is where trial will best serve the convenience of the parties and the ends of justice." *Koster v. Lumbermans Mutual Cas. Co.*, 330 U.S. 518, 527 (1946). "[A] real showing of convenience by a plaintiff who has sued in his home forum" is entitled to deference (*id.* at 524) but is not dispositive (*Piper*, 454 U.S. at 256 n. 23). In each case, the court must consider whether plaintiff has made "a real showing of convenience," but should dismiss "if the balance of conveniences suggests that trial in the chosen forum would be unnecessarily burdensome for the defendant or the court." *Id.*

The cases Mr. Hirsch relies on (Pet. 25-26) raise no conflict among the circuits; they simply decide different cases differently based on their different facts. In *Lehman v. Humphrey Cayman, Ltd.*, 713 F.2d 339 (8th Cir. 1983), *cert. denied*, 464 U.S. 1042 (1984), plaintiff was financially unable to bring suit in the proposed alternative forum. 713 F.2d at 345-46. In reversing a *forum non conveniens* dismissal, the Eighth Circuit stressed that district courts faced with such motions "must be alert to the realities of the plaintiff's position, financial and otherwise, and his or her ability as a practical matter to bring suit in the alternative forum." *Id.* at 346. The Eighth Circuit's formulation is entirely consistent with the opinion of the court below. The practical realities of Mr. Hirsch's situation here are simply a far cry from the plight of the impoverished widow suing in *Lehman*.

Similarly, in *Schexnider v. McDermott Int'l, Inc.*, 817 F.2d 1159 (5th Cir.), *cert. denied*, 484 U.S. 977 (1987), the plaintiff made "a real showing of convenience." Many of plaintiff's witnesses were in this country; trial in the alternative forum

— Australia — "would in all likelihood be a hardship to [plaintiff] who is apparently not in good health;" and the defendants did not show that they would be inconvenienced by trial in plaintiff's chosen forum. 817 F.2d at 1163. Here, by contrast, Mr. Hirsch simply has not made "a real showing of convenience." Aside from his residence, petitioner does not identify any of the "convenience-related factors and circumstances" (Pet. 23) he claims the lower courts ignored — understandably, since there are none. Mr. Hirsch has no serious answer to the findings of the courts below that he would not be inconvenienced by trial in England. After all, it was to England that he traveled to affiliate himself with the venerable English institution of Lloyd's of London. In addition, all witnesses other than Mr. Hirsch are English; the Lloyd's Respondents will be seriously inconvenienced by trial in Texas; and all of the public interest factors, particularly England's interest in regulating the internal affairs of Lloyd's and the difficulties an American Court would encounter in obtaining authoritative English interpretations of the Lloyd's Acts, militate in favor of an English forum.

Finally, Mr. Hirsch raises numerous small points that can be dealt with summarily. His claim that the lower courts were unaware of his American citizenship (Pet. 20) is ludicrous. *See, e.g.*, A-4-5, A-9 (noting that all material parties, and all witnesses *other than plaintiff* are English). Mr. Hirsch's argument about the supposed "nexus" of his claim to Texas (Pet. 20) might be useful in establishing the minimum contacts necessary to support personal jurisdiction, but it entirely misses the point of the *forum non conveniens* analysis, which is directed to the locus of the relevant witnesses and evidence. Last, Mr. Hirsch argues, in essence, that the Fifth Circuit should have reversed because the district court did not discuss at great enough length the supposed benefits of his chosen forum. Pet. 15-20. In fact, however, it was *Mr. Hirsch* who briefed *forum non conveniens* to the district court only "in the most perfunctory manner" (A-2)[8] and

[8] Mr. Hirsch opposed the *forum non conveniens* motion made by Oakeley Vaughan and Company Limited but did not oppose the *forum non conveniens* motion made below by the Lloyd's respondents.

who failed to bring to that court's attention any factors that could possibly make trial in Texas "easy, expeditious and inexpensive." *Gilbert*, 330 U.S. at 508.

CONCLUSION

The petition for *certiorari* should be denied.

Respectfully submitted,

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The Corporation of Lloyd's

Dated: October 26, 1990

LLOYD'S RESPONDENTS' APPENDIX

IN THE HIGH COURT OF JUSTICE 1987 A No 3172

QUEEN'S BENCH DIVISION

COMMERCIAL COURT

B E T W E E N:

PATRICIA ASHMORE

First Plaintiff

and

JOHN ATTRIDGE

Second Plaintiff

and

FRANCESCO BOSSI

Third Plaintiff

and

ETTORE BOTTA

Fourth Plaintiff

and

CHARLES CAVENAGH-MAINWARING

Fifth Plaintiff

and

JULIE CORMAN

Sixth Plaintiff

and

CHRISTOPHER CORNWALL-LEGH

Seventh Plaintiff

and

RICHARD CORNWALL-LEGH

Eighth Plaintiff

and

TONY COYLE

Ninth Plaintiff

and

NAT FENTON

Tenth Plaintiff

and

HAROLD FREEMAN

Eleventh Plaintiff

and

JEREMY GOOLD

Twelfth Plaintiff

and

JOHN GRIBBEN

Thirteenth Plaintiff

and

MICHAEL HACKER

Fourteenth Plaintiff

and

WILLIAM HACKER

Fifteenth Plaintiff

and

HERBERT HOOVER

Sixteenth Plaintiff

and

DONAL KINSELLA

Seventeenth Plaintiff

and

JEROME McHUGH

Eighteenth Plaintiff

and

WILLIAM MOSTYN-OWEN
Nineteenth Plaintiff

and

LIAM MULDOON
Twentieth Plaintiff

and

HOWARD O'BRIEN
Twenty-First Plaintiff

and

JOHN O'MAHONY
Twenty-Second Plaintiff

and

WILLIAM PIGGOT-BROWN
Twenty-Third Plaintiff

and

ANTHEA POWELL
Twenty-Fourth Plaintiff

and

THOMAS CARR POWELL
Twenty-Fifth Plaintiff

and

WINSTON WENDT PURVIS
Twenty-Sixth Plaintiff

and

REGIS REMILLARD
Twenty-Seventh Plaintiff

and

DENNIS JOHN SKINNER
Twenty-Eighth Plaintiff

and

ELIZABETH STONE
Twenty-Ninth Plaintiff

and

JAMES STONE
Thirtieth Plaintiff

and

MARGARET STONE DREWYER
Thirty-First Plaintiff

and

SUZANNE STONE
Thirty-Second Plaintiff

and

CHARLES THOMPSON
Thirty-Third Plaintiff

and

JOHN WATERHOUSE (JNR)
Thirty-Fourth Plaintiff

and

JOHN WATERHOUSE (SNR)
Thirty-Fifth Plaintiff

and

PETER WILKIE
Thirty-Sixth Plaintiff

and

VALERIE WILLES
Thirty-Seventh Plaintiff

and

MAXINE D'WINGFIELD
Thirty-Eighth Plaintiff

and

CHRISTOPHER WOOD
Thirty-Ninth Plaintiff

- AND -

THE CORPORATION OF LLOYD'S
Defendants

POINTS OF CLAIM

1. The Defendant ("Lloyd's") is a society and corporation incorporated by that name pursuant to the provisions of the Lloyd's Acts 1871 to 1951 and its By-Laws.

2. The objects of Lloyd's have at all material times been:

   "The carrying on by members of the Society of the business of insurance of every description including guarantee business;"

   The advancement and protection of the interests of members of the Society in connection with the business carried on by them as members of the Society and in respect of shipping and cargoes and freight and other insurable property or insurable interests or otherwise;

   The collection, publication and diffusion of intelligence and information;

   The doing of all things incidental or conducive to the "fulfillment of the objects of the Society."

   (See section 4 of the 1911 Lloyd's Act).

3. Prior to 1982 the Lloyd's Acts provided that there should be a committee of the members of Lloyd's and that committee was conferred with the management and superintendence of the affairs of Lloyd's.

4. The 1982 Lloyd's Act created the Council, and conferred on the Council the management and superintendence of the affairs of Lloyd's and the power to regulate and direct the business of insurance at Lloyd's.

5. The Plaintiffs were at various times material to these proceedings underwriting members of Lloyd's who are generally known as "Names" and are hereinafter referred to as such. Each of the Plaintiffs was a Name during one or more of the years 1980 to 1982.

6. At all material times, Names were required by Lloyd's to manage and conduct their insurance business at Lloyd's through syndicates and through the medium of underwriting agents approved on behalf of Lloyd's.

7. A syndicate at Lloyd's has always been a group of Names who have, directly or indirectly, delegated to an underwriting agent the power to manage and conduct their underwriting business at Lloyd's in relation to a particular class or classes of business.

8. Until the coming into force of the 1982 Act (or thereabouts) underwriting agents were persons approved by the Committee to act as such at Lloyd's; since that time, they have been persons permitted by the Council to act as aforesaid.

9. At all material times, the delegation of the power to an underwriting agent could have been effected as follows:

   Either -

   (a) the underwriting agent for a Name might himself manage and conduct the underwriting business of the syndicate or syndicates to which that Name (known as a "direct Name") belonged; or

   (b) such underwriting agent, acting in the role of a "member's agent", might arrange for such Name membership of a syndicate or syndicates, the underwriting business of which was managed or conducted by some other underwriting agent and the member's agent would, by means

of a sub-agency agreement, confer on such other underwriting agent power to manage and conduct the insurance business of that Name (known as an "indirect Name") in relation to such syndicate or syndicates.

10. As a member of Lloyd's each of the Plaintiffs was a party to, and bound by, an agreement between himself and Lloyd's, the express terms of which were contained in a Form of Undertaking on Admission which they respectively signed prior to their admission as members of Lloyd's.

11. Pursuant to such express terms, each of the Plaintiffs undertook as follows:

(a) So long as he continued to be a Name, and thereafter until his underwriting business had been fully wound up, either to attend regularly in person at Lloyd's to carry on his own underwriting, or to appoint and maintain an agent having the right of admission to the room at Lloyd's to conduct his underwriting business on his behalf; and

(b) That the amount of his premium income in any calendar year would not exceed the premium limit.

12. The observance of the premium income limit was, as Lloyd's well knew, a very important protection to the Names. Premium income limits are the only means by which the Names can do anything to limit the total amount of underwriting which they are prepared to undertake. If the premium income limits are exceeded, the potential losses to which Names are exposed will be increased.

13. It was a term of the relationship between the Plaintiffs and Lloyd's that the appointment of underwriting agents by the Plaintiffs would be by way of a full and complete delegation of all underwriting business by the Plaintiffs to their underwriting agent.

PARTICULARS

In support of this contention, the Plaintiffs will rely on the following provisions:

(a) Clauses 30 and 31 of the Form of Undertaking on Admission;

(b) The Underwriting Agents' Manual, section a, and

(c) The Notes for Applicants for Underwriting Membership in the Underwriting Agents' Manual.

14. It was further term of the relationship between the Plaintiffs and Lloyd's that they:

(a) should prepare or cause to be prepared underwriting accounts for submission to an annual audit in accordance with the requirements from time to time proscribed or approved by Lloyd's (clause 4).

(b) should at all times give to Lloyd's on request full and complete information as to any business at Lloyd's from time to time conducted on their respective behalves (clause 17).

15. Lloyd's were at all material times obliged to perform the specific duties pleased above by virtue of one or more of the following reasons.

(a) Lloyd's were subject to a statutory duty, pursuant to its Constitution, to each of the plaintiffs to perform such duties.

(b) Lloyd's owed to each of the Plaintiffs a duty of care at common law so to exercise its powers under its Constitution that the interests of the Plaintiffs, as members of Lloyd's, would be adequately protected.

(c) It was an implied term of the membership agreement made with each of the Plaintiffs or, in the alternative, of the general contractual relationship between Lloyd's and each of the Plaintiffs, that Lloyd's would perform the said specific duties.

16. It was Lloyd's duty to each of the Plaintiffs to:

(a) act in accordance with, and enforce, the provisions of its Constitution;

(b) exercise reasonable care, in making and enforcing bye-laws or otherwise, to ensure that the business of the insurance market at Lloyd's was conducted, supervised and regulated in an honest, competent and proper manner;

(c) exercise reasonable supervision over all agreements and arrangements entered into in accordance with the membership agreement or any relevant bye-laws made by Lloyd's;

(d) notify the Plaintiffs of any matter which came to the attention of Lloyd's, which merited or called for investigation by the Plaintiffs for better protection of their interests;

(e) intervene to protect the Plaintiffs against any conduct which was calculated to prejudice their interests as Names.

17. It was further Lloyd's duty to each of the Plaintiffs to approve, or allow to function, only such underwriting agents as possessed sufficient knowledge, experience and integrity to manage and conduct the affairs of the Plaintiffs in a proper and competent manner.

18. It was further Lloyd's duty to each of the Plaintiffs to regulate and control the general manner in which

underwriting agents conducted their, and the Plaintiffs', business at Lloyd's.

19. It was further Lloyd's duty to each of the Plaintiffs to ensure that the Plaintiffs' underwriting agents duly complied with the requirements of Lloyd's and that the Plaintiffs:

    (a) should keep their premium income within the premium income limit;

    (b) should submit appropriate accounts for annual audit;

    (c) should give Lloyd's full and complete information as to their underwriting business when required to do so;

20. Further, the Plaintiffs will contend that Lloyd's owed the said specific duties to each of them for the following reasons:

    (a) Since each of the Plaintiffs elected not to attend in person at Lloyd's, but to appoint and maintain an underwriting agent to conduct their underwriting business on their behalf, the Plaintiffs were, as Lloyd's well knew, precluded by the express requirements of the membership agreement, and by contract with the underwriting agents, from intervening in the conduct of the business;

    (b) Accordingly, the Plaintiffs were entitled to rely, and did rely, upon Lloyd's to exercise appropriate and satisfactory supervision of the market so as adequately to safeguard and protect their interests.

21. Pursuant to the undertaking contained in the membership agreement each of the Plaintiffs elected to appoint an underwriting agent to conduct their underwriting business at Lloyd's.

22. Each such appointment was contained in a written agreement. Full particulars will be given in due course and will set out the following details:

    (a) The name of each of the Plaintiffs;

    (b) The syndicate(s) to which he belonged in any relevant year of account;

(c) The date of such agreement;

(d) The name of the underwriting agent;

(e) In the case of indirect Names among the Plaintiffs, the date of the relevant sub-agency agreement.

Oakeley Vaughan (Underwriters) Limited ("Oakeley Vaughan")

23. At all material times Oakeley Vaughan was authorized or permitted by the Committee, and subsequently by the Council, to act as an underwriting agent on behalf of names.

24. Accordingly, at all material times Oakeley Vaughan managed and conducted the underwriting business of Names (including the Plaintiffs) who were from time to time members of Syndicates Nos. 420, 551 and 862, through active underwriters employed by it.

Oakeley Vaughan so acted under:

(a) Agency agreements made between Oakeley Vaughan and the Names directly (including some of the Plaintiffs); and

(b) Sub-agency agreements made between Oakeley Vaughan and members' agents for other Names (including some of the Plaintiffs), such members' agents entering into such arrangements pursuant to the terms of the agency agreement between each such Name and the members' agent.

Full Particulars of these matter will be served in due course.

Overwriting by Oakeley Vaughan

25. Oakeley Vaughan exceeded the premium income limits for the Names participating in Syndicates 420, 551 and 862 managed by it in the year 1980.

PARTICULARS

(a) Syndicate 420:

Premium written for 1980 year of account at 36 months:	£3,917,775
Syndicate capacity for 1980 year of account	£3,000,000
Overwritten	£ 917,775

(b) Syndicate 551:

Premium written for 1980 year of account at 36 months:	£3,986,302
Syndicates capacity for 1980 year of account	£3,060,000
Overwritten	£ 926,302

(c) Syndicate 862:

Premium written for 1980 year of account at 36 months:	£2,494,809
Syndicate capacity for 1980 year of account	£1,780,000
Overwritten	£ 714,809

26. At about the end of 1980 or during the 1981 Lloyd's commissioned an inquiry by Mr. Henry Chester into the degree of overwriting by Oakeley Vaughan and/or into its management and subsequently received a report ("the Chester Report") following the said inquiry.

27. Lloyd's did not contemporaneously (or subsequently) reveal the existence of the said inquiry or the Chester Report or its findings to the Names.

28. The Chester Report (and a supplemental report) delivered in about mid-1981 revealed or ought to have revealed:

(a) the extent of overwriting by Oakeley Vaughan;

(b) that Oakeley Vaughan had failed to adhere to established procedures in the conduct of business at Lloyd's as stated in a letter from Lloyd's to Oakeley Vaughan dated 4th December 1981;

(c) that Oakeley Vaughan possessed insufficient management control to ensure that premium income was kept within the premium income limits;

(d) that the management of Oakeley Vaughan was not sufficiently competent or prudent to conduct the affairs of Names in a proper and competent manner.

Lloyd's has persistently refused to disclose the Chester Report or its findings to the Plaintiffs. Further particulars of the findings of the Chester Report will be supplied after discovery herein and/or answers to Interrogatories.

29. Oakeley Vaughan continued to exceed the premium income limits for the Names participating in Syndicates 420, 551 and 862 in the years 1981 and 1982.

PARTICULARS

Syndicate 420

Premium written for 1981 year of account at 36 months:	£5,684,556
Syndicate capacity for 1981 year of account:	£3,803,000
Overwritten:	£1,881,556
Premium written for 1982 year of account at 36 months:	£9,417,073
Syndicate capacity for 1982 year of account:	£3,066,000
Overwritten:	£5,751,073

Syndicate 551

Premium written for 1981 year of account at 36 months:	£7,125,309
Syndicate capacity for 1981 year of account:	£4,610,000
Overwritten:	£2,515,309
Premium written for 1982 year of account:	£11,982,182
Syndicate capacity for 1982 year of account:	£4,985,000
Overwritten:	£7,015,000

Syndicate 862

Premium written for 1981 year of account at 36 months:	£2,934,485
Syndicate capacity for 1981 year of account:	£2,025,000
Overwritten:	£ 909,485
Premium written for 1982 year of account at 36 months:	£1,467,979
Syndicate capacity for 1982 year of account:	£1,415,000
Overwritten:	£ 52,979

30. In breach of its duty to the Plaintiffs as pleaded above, Lloyd's during the period between 1980 and 1982 failed to take any or any adequate steps to ensure that Oakeley Vaughan did not exceed the premium income limits and/or to ensure that the Plaintiffs received adequate information and accounts from their respective underwriting agents, in particular:

(a) Lloyd's laid down no adequate rule for ensuring that the net premium income of a Syndicate was not distorted by the deduction from the premium income of premiums in respect of reinsurance and failed to provide any adequate system for the enforcement of such rules as it had laid down for the purpose of preventing such distortion.

(b) Lloyd's laid down no adequate rules for ensuring that premium income limits were not exceeded and/or laid down no adequate procedures to check whether such limits were being exceeded at any material time.

31. Further, Lloyd's knew or ought to have known by mid-1981 (at the latest) that material irregularities had occurred and were being carried on by Oakeley Vaughan on behalf of Names in that:

(a) Premium income limits were being substantially abused;

(b) There were insufficient management controls within Oakeley Vaughan to ensure that premium income was kept within the premium income limit.

(c) The management of Oakeley Vaughan was not sufficiently competent or prudent to conduct the affairs of the Plaintiffs and other Names in a proper and competent manner.

32. The facts and matters referred to above were such as required Lloyd's to act so as to protect the Plaintiffs whether by:

(a) suspending Oakeley Vaughan;

(b) instructing Oakeley Vaughan to cease underwriting forthwith;

(c) informing the Plaintiffs directly of the facts and matter known to Lloyd's;

(d) investigating fully the circumstances in which Oakeley Vaughan's business was being conducted and informing the Plaintiffs of the result of such investigation;

(e) taking such further or action as would ensure that the Plaintiffs' interest were protected.

33. In breach of their duty Lloyd's failed to take any or any satisfactory steps to protect the Plaintiffs but wrongfully:

(a) permitted Oakeley Vaughan to continue underwriting;

(b) failed to inform the Plaintiffs of the facts of the Chester Inquiry and/or its findings and/or the steps to be taken consequent thereon; and/or

(c) failed to implement any or any satisfactory safeguards to ensure that Oakeley Vaughan, if permitted to continue underwriting, only wrote within premium income limits;

(d) failed to take any or any satisfactory steps to safeguard the interests of the Plaintiffs.

34. By reason of the said breaches of duty the Plaintiffs have suffered loss and damage.

PARTICULARS

(a) All losses in respect of contracts underwritten on their behalf by Oakeley Vaughan in 1980 and/or 1981 and/or 1982 and any subsequent years. Alternatively,

(b) Losses on all contracts underwritten by Oakeley Vaughan in excess of premium income limits in 1980 and/or 1981 and/or 1982.

35. The Plaintiffs further claim interest pursuant to section 35A of the Supreme Court Act 1981 on all such charges.

AND THE PLAINTIFF CLAIM:

(1) Damages for breach of statutory duty and/or contract and/or a common law duty of care.

(2) A declaration that Lloyd's is bound to indemnify them, and each of them, against the damages and losses respectively suffered by them by reason of the matters pleaded.

(3) Interest pursuant to section 35A of the Supreme Court Act, 1981.

MARK HOWARD

Served this day of 1987 by Elborne Mitchell of Three Quays, Tower Hill, London EC3, Solicitors to the Plaintiffs.

CAUSE NUMBER 86-40329

JAY D. HIRSCH	§	IN THE DISTRICT
	§	COURT OF
VS.	§	
	§	
OAKELEY VAUGHAN UNDER-	§	
WRITING LIMITED, CHARLES	§	
A. B. ST. GEORGE, JAMES C.	§	
B. ST. GEORGE, MARK E. P.	§	
ST. GEORGE, EDWARD ST.	§	HARRIS COUNTY,
GEORGE, OAKELEY	§	TEXAS
VAUGHAN AND COMPANY	§	
LIMITED, THE CORPORA-	§	
TION OF LLOYD'S, THE	§	
COUNCIL OF LLOYD'S, THE	§	
SOCIETY OF LLOYD'S,	§	
COUTTS & COMPANY, and	§	281ST JUDICIAL
ALLIED BANK OF TEXAS	§	DISTRICT

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION AND APPLICATION FOR TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW JAY D. HIRSCH, Plaintiff herein, complaining of OAKELEY VAUGHAN UNDERWRITING LIMITED, CHARLES A. B. ST. GEORGE, JAMES C. B. ST. GEORGE, MARK E. P. ST. GEORGE, EDWARD ST. GEORGE, OAKELEY VAUGHAN AND COMPANY LIMITED, THE CORPORATION OF LLOYD'S, THE COUNCIL OF LLOYD'S, THE SOCIETY OF LLOYD'S, COUTTS & COMPANY, and ALLIED BANK OF TEXAS as Defendants and for cause thereof would show unto the Court as follows:

I.

The Plaintiff, JAY D. HIRSCH, is an individual who resides in Houston, Harris County, Texas.

Defendant OAKELEY VAUGHAN UNDERWRITING LIMITED is a foreign corporation, or other form of business entity existing under the laws of England, which has in the past and is presently doing business in the State of Texas, as that term is defined in Section 17.042 of the *Texas Civil Practices and Remedies Code*. This Defendant does not maintain a place of regular business in the State of Texas and has no designated agent on whom service of citation may be made in this cause. Accordingly, pursuant to Section 17.044(b) of the *Texas Civil Practices and Remedies Code*, OAKELEY VAUGHAN UNDERWRITING LIMITED has been previously duly served with citation on this cause and has specifically appeared through counsel pursuant to Rule 120a of the Texas Rules of Civil Procedure.

Defendant CHARLES A. B. ST. GEORGE, is a non-resident individual who has in the past and is presently doing business in the State of Texas, as that term is defined in Section 17.042 of the *Texas Civil Practice and Remedies Code*. This Defendant does not maintain a place of regular business in the State of Texas and has no designated agent or whom service of citation maybe made in this cause. Accordingly, pursuant to Section 17.044(b) of the *Texas Civil Practices and Remedies Code*, CHARLES A. B. ST. GEORGE has been previously duly served with citation in this cause and has specially appeared pursuant to Rule 120a of the Texas Rules of Civil Procedure.

Defendant, JAMES C. B. ST. GEORGE is a non-resident individual which has in the pasty and is presently doing business in the State of Texas, as that term is defined in Section 17.042 of the *Texas Civil Practices and Remedies Code*. This Defendant does not maintain a place of regular business in the State of Texas and has no designated agent whom service of citation may be made in this cause. Accordingly, pursuant to Section 17.044(b) of the *Texas Civil Practices and Remedies Code*, JAMES C. B. ST. GEORGE has been previously duly served with citation on this cause and has specially appeared pursuant to Rule 120a of the Texas Rules of Civil Procedure.

Defendant, MARK E. P. ST. GEORGE is a non-resident individual who has in the past and is presently doing business in

the State of Texas, as that term is defined in Section 17,042 of the *Texas Civil Practices and Remedies Code*. This Defendant does not maintain a place of regular business in the State of Texas and has no designated agent upon whom service of citation may be made in this cause. Accordingly, pursuant to Section 17.044(b) of the *Texas Civil Practices and Remedies Code*, MARK E. P. ST. GEORGE has been previously duly served with citation in this cause and has specially appeared through counsel pursuant to Rule 120a of the Texas Rules of Civil Procedure.

Defendant, EDWARD ST. GEORGE is a non-resident individual who has in the past and is presently doing business in the State of Texas, as that terms is defined in Section 17.042 of the *Texas Civil Practices and Remedies Code*. This Defendant does not maintain a place of regular business in the State of Texas and has no designated agent upon whom service of citation may be made in this cause. Accordingly, pursuant to Section 17.044(b) of the *Texas Civil Practices and Remedies Code*, EDWARD ST. GEORGE has been previously duly served with citation in this cause and has specially appeared through counsel pursuant to Rule 120a of the Texas Rules of Civil Procedure.

Defendant, OAKELEY VAUGHAN AND COMPANY LIMITED, is a foreign corporation or some other form of business entity which has in the past and is presently doing business in the State of Texas, as that term is defined in Section 17.042 of the *Texas Civil Practices and Remedies Code*. This Defendant does not maintain a place of regular business in the State of Texas and has no designated agent upon whom service of citation may be made in this cause. Accordingly, pursuant to Section 17.044(b) of the *Texas Civil Practices and Remedies Code*, OAKELEY VAUGHAN AND COMPANY LIMITED has been previously duly served with citation in this cause and has specially appeared through counsel pursuant to Rule 120a of the Texas Rules of Civil Procedure.

Defendant, THE CORPORATION OF LLOYD'S, is a foreign corporation or some other form of business entity which

has in the past and is presently doing business in the State of Texas, as that terms is defined in Section 17.042 of the *Texas Civil Practices and Remedies Code*. This Defendant does not maintain a place of regular business in the State of Texas and has no designated agent upon whom service of citation may be made in this cause. Accordingly, pursuant to Section 17.044(b) of the *Texas Civil Practices and Remedies Code*, THE CORPORATION OF LLOYD'S has been previously duly served with citation in this cause and has specially appeared through counsel pursuant to Rule120a of the Texas Rules of Civil Procedure.

Defendant, THE COUNCIL OF LLOYD'S, is a foreign corporation or some other form of business entity which has in the past and is presently doing business in the State of Texas, as that terms is defined in Section 17.042 of the *Texas Civil Practices and Remedies Code*. This Defendant does not maintain a place of regular business in the State of Texas and has no designated agent upon whom service of citation may be made in this cause. Accordingly, pursuant to Section 17.044(b) of the *Texas Civil Practices and Remedies Code*, this Defendant may be served with citation herein by serving the Secretary of State of Texas who in turn shall forward process to Defendant's address by registered mail or by certified mail, return receipt requested. The name and address of said Defendant is THE COUNCIL OF LLOYD'S, located at Lloyd's, Lime Street, London EC3, England.

Defendant, THE SOCIETY OF LLOYD'S, is a foreign corporation or some other form of business entity which has in the past and is presently doing business in the State of Texas, as that term is defined in Section 17.042 of the *Texas Civil Practices and Remedies Code*. This Defendant does not maintain a place of regular business in the State of Texas and has no designated agent on whom service of citation may be made in this cause. Accordingly, pursuant to Section 17.044(b) of the *Texas Civil Practices and Remedies Code*, this Defendant may be served with citation herein by serving the Secretary of State of Texas who in turn shall forward process to Defendant's address by registered mail or by certified mail, return receipt

requested. The name and address of said Defendant is THE SOCIETY OF LLOYD'S, located at Lloyd's, Lime Street, London EC3, England.

Defendant, COUTTS & COMPANY, is a foreign corporation or some other form of business entity which has in the past and is presently doing business in the State of Texas, as that term is defined in Section 17.042 of the *Texas Civil Practices and Remedies Code*. This Defendant does not maintain a place of regular business in the State of Texas and has no designated agent upon whom service of citation may be made in this cause. Accordingly, pursuant to Section 17.044(b) of the *Texas Civil Practices and Remedies Code*, COUTTS & COMPANY has been previously duly served with citation in this cause but has failed to file answer herein. A courtesy copy of this Amended Petition has been mailed to this Defendant at Stonestreet House, 143 Cannon Street, London EC4N 5BJ, England.

Defendant, ALLIED BANK OF TEXAS, a banking corporation duly formed and existing under the laws of the State of Texas, has been served with citation through its registered agent and has made an appearance in this case through counsel.

II.

PIERCING THE CORPORATE VEIL/ALTER EGO

Plaintiff asserts that there is such unity among the Council of Lloyd's, The Corporation of Lloyd's and The Society of Lloyd's, that the separate existence of said Defendants, hereinafter collectively referred to as "LLOYD'S", has ceased and an adherence to the fiction of the separate existence of said Defendants would, under the circumstances described herein, sanction a fraud or promote injustice.

III.

1. On or about January 1, 1981, the Plaintiff, JAY D. HIRSCH was duly elected as an underwriting member of LLOYD'S. When elected, underwriting members are required to enter into an underwriting agency agreement with an underwriting agent in turn employs an underwriter to write business for

all members of a syndicate under which the underwriting members or names do business. On or about January 1, 1981 the Plaintiff, JAY D. HIRSCH, entered into underwriting agreements as a name with the Defendant, OAKELEY VAUGHAN UNDERWRITING LIMITED which provided among other things that OAKELEY VAUGHAN UNDERWRITING LIMITED would act as the underwriting agent for the name, JAY D. HIRSCH, for the purposes of underwriting at LLOYD'S for the account of the name, JAY D. HIRSCH, policies and contracts of insurance, reinsurance, and guarantee relating to all classes of insurance business which with the sanction of the committee of LLOYD'S may be transacted at LLOYD'S by the syndicate or syndicates which the name, JAY D. HIRSCH, is and was a member. A copy of the General Undertaking Agreement and other documents executed by JAY D. HIRSCH with LLOYD'S and/or the other Defendants, which provides for performance by the parties in whole or in part are attached hereto as Exhibit "B".

2. At all material times herein, the Plaintiff, JAY D. HIRSCH, is and was a member of syndicates 420, 551, and 862 for the years of the accounts in question. Said syndicates were under the sole and exclusive control of the Defendant, OAKELEY VAUGHAN UNDERWRITING LIMITED and its directors, CHARLES A. B. ST. GEORGE, JAMES C. B. ST. GEORGE, MARK E. P. ST. GEORGE and EDWARD ST. GEORGE, Defendants herein. Defendants OAKELEY VAUGHAN UNDERWRITING LIMITED, and its directors, as underwriting agents or syndicates 420, 551 and 862 were fiduciaries of the names under said syndicates and had a duty to conduct and manage the underwriting affairs of said syndicates on behalf of its names in a reasonable and prudent manner and to comply fully with all the requirements and regulations of the Defendant, LLOYD'S, on behalf of the names for whom it acted. In underwriting for the accounts of its names, Defendant, OAKELEY VAUGHAN UNDERWRITING LIMITED and its directors were required to underwrite the amount of premium income provided for by

the current regulations of LLOYD'S in relation to a names, means and deposit. As such, Defendant OAKELEY VAUGHAN UNDERWRITING LIMITED and its directors were required to take reasonable steps to insure that the amount of insurance business underwritten in syndicates 420, 551, and 862 would not cause the syndicate premium allocable to a certain year of account to exceed the syndicate allocated capacity for that certain year of account. Defendants, OAKELEY VAUGHAN UNDERWRITING LIMITED and its directors were further required to establish and maintain effective systems for monitoring the syndicate premium income and to keep the actual and forecast syndicate premium income allocable to every open year of account under active review at all times. Further, Defendants, OAKELEY VAUGHAN UNDERWRITING LIMITED and its directors were required to protect the syndicates and accounts of its name through reasonable and prudent methods of reinsurance including but not limited to effecting appropriate excess of loss reinsurance, aggregate excess of loss reinsurance, or excess loss ratio reinsurance, in addition to arranging and procuring appropriate stop loss insurance for its particular names.

3. Plaintiff, JAY D. HIRSCH, would show that it with respect to syndicates 420, 551 and 862, the Defendants OAKELEY VAUGHAN UNDERWRITING LIMITED and its directors had consistently overwritten and exceeded the premium income limits for the 1980 through 1983 years of account in violation of the requirements and regulations of the Defendant, LLOYD'S. In short, the management and directors of Defendant, OAKELEY VAUGHAN UNDERWRITING LIMITED failed to properly and adequately monitor, insure and require that the premiums of syndicates 420, 551 and 862 did not exceed the limits prescribed by the underwriting agency agreement and the LLOYD'S regulations and requirements. Furthermore, the management and directors of Defendant OAKELEY VAUGHAN UNDERWRITING LIMITED failed to properly protect their syndicates and accounts by appropriating proper reinsurance and stop loss insurance.

4. Plaintiff would show further that during the late 1980 or early 1981 the committee of LLOYD'S, Defendant, appointed Mr. Henry Chester to undertake an inquiry into the management and affairs of OAKELEY VAUGHAN UNDERWRITING LIMITED. This inquiry was the direct result of constant and flagrant overwriting violations which directly contravene the rules and regulations of LLOYD'S and give rise to the damages and losses in question. Plaintiff would show that such an inquiry into the competence of underwriting agents at LLOYD'S is of critical importance to the names, such as your Plaintiff, JAY D. HIRSCH, who subscribed through a members agency on syndicates managed by that agent. Plaintiff would show further that at no time was he ever informed of the fact giving rise to or the conclusions of the Chester inquiry, nor of the violations of the rules and regulations of LLOYD'S by the directors of OAKELEY VAUGHAN UNDERWRITING LIMITED. Moreover, the Defendant, LLOYD'S did not at any time material herein remove the management of the affairs of syndicates 420, 551 and 862 from Defendant, OAKELEY VAUGHAN UNDERWRITING LIMITED as has been done in similar circumstances. Plaintiff would show that the relationship between a LLOYD'S member, his agent, and LLOYD'S is a personal one based on trust and would show that had such matters concerning the overwriting practices of OAKELEY VAUGHAN UNDERWRITING LIMITED been disclosed by the directors of OAKELEY VAUGHAN UNDERWRITING LIMITED, OAKELEY VAUGHAN UNDERWRITING LIMITED, and LLOYD'S, your Plaintiff, JAY D. HIRSCH, would have never undertaken placement as a name on said syndicates which thereby resulted in the damages in question. Moreover, at no time did LLOYD'S ever inform your Plaintiff, JAY D. HIRSCH, of the Chester report and subsequently failed to properly monitor the management and affairs of OAKELEY VAUGHAN UNDERWRITING LIMITED to prevent said overwriting practices from continuing.

5. Plaintiff would show further that during 1979 syndicate 551 bought a reinsurance from the Fen-Re Intercommunity Re

Pool through the agency of the Defendant, OAKELEY VAUGHAN & COMPANY LIMITED. On or about December, 1981, considerable difficulty was being encountered in the market in obtaining recoveries from the Fen-Re. At that particular time the Fen-Re owed to syndicate 551 a very substantial sum. Defendant, OAKELEY VAUGHAN & COMPANY LIMITED paid to syndicate 551 a sum in excess of 250,000 pounds in early January, 1982, being credits due to the syndicate on its reinsurance claims against various reinsurers, including to the extent of 250,000 pounds Fen-Re, but which claims had not at that time been collected by OAKELEY VAUGHAN & COMPANY LIMITED from such reinsurers. By making such a payment OAKELEY VAUGHAN UNDERWRITING LIMITED represented to the names on whose behalf the reinsurance was placed that sums due thereunder were recoverable when they know or should have known that this was not true. Had your plaintiff, JAY D. HIRSCH known of the true state of the accounts for 1979 he would have taken steps to remove himself from the syndicate 551 thus preventing the losses and damages resulting by his remaining on that syndicate.

6. Plaintiff would further show that in its 1981 account, syndicate 551 underwrote a U.S. Fire Treaty as a reinsurance of the Insurance Corporation of Ireland. Substantial losses are now being claimed which greatly exceed the premium income allocated for this syndicate. With proper management, OAKELEY VAUGHAN UNDERWRITING LIMITED should have been aware of the fact that the original estimates were being exceeded and have undertaken the necessary steps to protect its names interest either by refusing to accept premium in excess of the estimate or requiring the Insurance Corporation of Ireland to obtain a reinsurance for premium accepted in excess of the original estimate. Moreover no attempt was made on the part of OAKELEY VAUGHAN UNDERWRITING LIMITED and its directors to advise, disclose or obtain stop loss insurance in this regard.

7. As the result of the unlawful acts, conduct and practices on the part of the Defendants, OAKELEY UNDERWRITING

LIMITED, CHARLES A. B. ST. GEORGE, JAMES C. B. ST. GEORGE, MARK E. P. ST. GEORGE, EDWARD ST. GEORGE, AND OAKELEY VAUGHAN AND COMPANY LIMITED and LLOYD'S described above, your Plaintiff, as a name on syndicates 420, 551 and 862 has incurred substantial losses and is currently being asked to pay very substantial sums to meet the claims and losses which have been incurred in the 1981 through 1983 accounts. By virtue of the above named Defendants' mismanagement of the syndicates in question, said claims and losses have resulted in deficits in the syndicate accounts.

IV.

FIRST CAUSE OF ACTION

1. Your Plaintiff would show that this suit is being filed pursuant to the provisions of the Texas Business and Commerce Code Annotated Section 17.41, *et seq*. commonly known as the Deceptive Trade Practices and Consumer Protection Act and herein referred to as the D.T.P.A., on the grounds that the acts and practices described above are prohibited by this statute.

2. Plaintiff would further show this Honorable Court that all conditions precedent to the filing of said action have been performed.

3. At all times material herein your Plaintiff JAY D. HIRSCH was a "consumer" as defined by Section 17.45(4) of the D.T.P.A. and as such is entitled to maintain an action against the Defendants, OAKELEY VAUGHAN UNDERWRITING LIMITED, CHARLES A. B. ST. GEORGE, JAMES C. B. ST. GEORGE, MARK E. P. ST. GEORGE, EDWARD ST. GEORGE and OAKELEY VAUGHAN AND COMPANY LIMITED and LLOYD'S as a result of said Defendants' violations of certain provisions of the D.T.P.A.

4. Pursuant to said Act, your Plaintiff would show that the unlawful acts and practices described above constitute

a. All Defendants caused confusion or misunderstanding in the mind of JAY D. HIRSCH as to the affiliation, connection or association with or certification by LLOYD'S and the non-bank Defendants. Defendants caused JAY D. HIRSCH to believe that LLOYD'S and all other non-bank Defendants were so affiliated, and contracting with LLOYD'S and Oakeley Vaughan Underwriting Limited, JAY D. HIRSCH was also dealing with or contracting with LLOYD'S as an entity in and of itself consisting of The Counsel of Lloyd's, the Corporation of Lloyd's and The Society of Lloyd's, or that Lloyd's would see to it that all other non-bank Defendants fulfilled its promises and obligations pursuant to all contracts signed by HIRSCH with Defendants. Said contracts were performable in whole or in part in Texas.

b. representations that the services of the above named Defendants had sponsorship, approval, and characteristics, uses, or benefits, which they in fact do not have in violation of Section 17.46(b)(4);

c. representations that the services of the above named Defendants were of a particular standard, quality or grade when they were in fact of another in violation of Section 17.46(b)(4);

d. representations that the agreements in question conferred or involved rights, remedies or obligations which in fact it did not have in violation of Section 17.46(b)(12);

e. representations that the services of the above named Defendants have been performed when in facts such represented services were not performed in violation of Section 17.46(b)(21);

f. a failure to disclose information concerning the services and inquiries of said Defendants which was known at that time of the transaction, when such failure to disclose such information was intended to induce your Plaintiff, JAY D. HIRSCH, into a transaction into which he would not

a. have entered had the above described information and services been disclosed in violation of Section 17.46(b)(23);

g. breaches of express or implied warranties in violation of Section 17.50(a)(2);

h. unconscionable acts or causes of action on the part of the Defendants named above in violation of Section 17.50(a)(3).

5. Your Plaintiff would show that the unlawful acts and practices described above are and were a producing cause of the damages to your Plaintiff.

6. Your Plaintiff would further show this Honorable Court and Jury that with respect to Defendants' violations of the D.T.P.A. enumerated above, that said unlawful acts and practices were committed knowingly by said Defendants. Thus, pursuant to D.T.P.A. Section 17.50, the actual damages found by the trier of facts which do not exceed $1,000 shall be multiplied times three and awarded to the Plaintiff. Moreover Plaintiff would show further that pursuant to Section 17.50 of the D.T.P.S. that he be awarded an amount not to exceed three times that amount of the actual damages which exceeds $1,000.

V.

SECOND CAUSE OF ACTION

1. Your Plaintiff in the alternative, would show that this suit is likewise being filed pursuant to the provisions of Sections 4 and 16 of Article 21.21 of the Texas Insurance Code. As such your Plaintiff is entitled to maintain an action against the Defendants, OAKELEY VAUGHAN UNDERWRITING LIMITED, CHARLES A. B. ST. GEORGE, JAMES C. B. ST. GEORGE, MARK E. P. ST. GEORGE, EDWARD ST. GEORGE and OAKELEY VAUGHAN AND COMPANY LIMITED and LLOYD'S as the result of said Defendants violations of the provisions of Section 4 of Article 21.21 of the Texas Insurance Code.

2. Pursuant to said Act your Plaintiff would show that the unlawful acts and practices described above constitute unfair and deceptive acts or practices in the business of insurance in violation of Section 4 of Article 21.21 of the Texas Insurance Code and are and were producing cause of the damage to your Plaintiff.

3. Plaintiff would further show that pursuant to Section 16(b)(1), your Plaintiff is entitled to the trebling of all actual damages found by the trier of fact.

VI.

THIRD CAUSE OF ACTION

1. In the alternative, without waiving the same, your Plaintiff would further allege that the occurrence in question as well as the damages made the basis of this lawsuit was proximately and/or solely caused by the negligence and breaches of fiduciary duty, breach of a duty of good faith and breach of contract on the parts of the Defendants, OAKELEY VAUGHAN UNDERWRITING LIMITED, CHARLES A. B. ST. GEORGE, JAMES C. B. ST. GEORGE, MARK E. P. ST. GEORGE, EDWARD ST. GEORGE, OAKELEY VAUGHAN AND COMPANY LIMITED in one or more of the following respects:

   a. the overwriting by said Defendants of the syndicates' premium income for syndicates 420, 551 and 862;

   b. in failing to properly manage and monitor the affairs of the Plaintiff as a name of the syndicates in question as a reasonably prudent LLOYD'S underwriter would have done under the same or similar circumstances;

   c. in failing to properly protect the Plaintiff's syndicates and accounts by proper methods of reinsurance as a reasonably prudent LLOYD'S underwriter would have done under the same or similar circumstances;

d. in failing to procure appropriate stop-loss insurance to protect the interest of the Plaintiff, name, as a reasonably prudent LLOYD'S underwriter would have done under the same or similar circumstances;

e. in failing to disclose to the Plaintiff the facts giving rise to, or the facts of, or the conclusions of an inquiry by LLOYD'S into the affairs of OAKELEY VAUGHAN UNDERWRITING LIMITED and its directors.

2. Plaintiff would further allege that by reason of the fact that the above named Defendants engaged in willful, malicious and wanton conduct and acted with a conscious indifference and disregard to the rights or welfare of your Plaintiff, JAY D. HIRSCH, you Plaintiff is allowed to recover exemplary damages as a result of the gross negligent conduct of said Defendant. In this connection your Plaintiff would request that exemplary damages be awarded against said Defendants in a sum which exceeds the minimum jurisdictional limits of this court.

VII.

FOURTH CAUSE OF ACTION

1. In the alternative without waiving the same, your Plaintiff would further allege that the occurrence made the basis of this lawsuit as well as the damages in question was proximately and/or solely caused by the negligence, breach of fiduciary duty, breach of a duty of good faith, and breach of contract on the part of the Defendant, LLOYD'S in one or more of the following respects:

a. failing to disclose to the Plaintiff the facts giving rise, the fact of, or the conclusions of the inquiry by LLOYD'S into the affairs of OAKELEY VAUGHAN UNDERWRITING LIMITED and its directors;

b. in approving, selecting and allowing OAKELEY VAUGHAN UNDERWRITING LIMITED and its directors to continue as the underwriting agent for your Plaintiff when the Defendant, LLOYD'S, knew or in the

a. exercise of reasonable care should have known that said underwriting agency had engaged in and continued to engage in violations of the practices, rules and regulations of LLOYD'S with respect to its overwriting practices.

c. in allowing, selecting, and approving, the Defendant, CHARLES A. B. ST. GEORGE, to continue as an executive director of the Defendant, OAKELEY VAUGHAN UNDERWRITING LIMITED;

d. in failing to monitor and regulate the overwriting practices of the Defendant OAKELEY VAUGHAN UNDERWRITING LIMITED;

2. Plaintiff would further allege that by reason of the fact that the Defendant, LLOYD'S engaged in willful, malicious, and wanton conduct and acted with a conscious indifference and disregard to the rights or welfare of your Plaintiff, your Plaintiff is allowed to recover exemplary damages as the result of the gross negligent conduct of said Defendant. In this connection Plaintiff would request that exemplary damages be warded against this Defendant in the sum which exceeds the minimum jurisdictional limits of this Court.

VIII.

FIFTH CAUSE OF ACTION

Plaintiff would further show, in the alternative, and without waiving the same, that the occurrence made the basis of this lawsuit as well as the damages in question were proximately and/or solely caused by the negligence, breach of duty, breach of duty of good faith, and breach of contract of the Defendant, OAKELEY VAUGHAN & COMPANY LIMITED by reason of the representation to your Plaintiff that reinsurance monies due and owing to members of syndicate 551 were recoverable from the intercommunity Re-Pool Fen-Re Agency by funding the sum of 250,000 pounds on or about January, 1982 thereby giving rise to the damages in question.

IX.

SIXTH CAUSE OF ACTION

1. In the alternative without waiving the same, your Plaintiff would further allege that the Defendants, OAKELEY VAUGHAN UNDERWRITING LIMITED, CHARLES A. B. ST. GEORGE, JAMES C. B. ST. GEORGE, MARK E. P. ST. GEORGE, EDWARD ST. GEORGE, and OAKELEY VAUGHAN AND COMPANY LIMITED, and LLOYD'S expressly and impliedly represented to your Plaintiff upon membership and election as a member of LLOYD'S that their services would be performed in a reasonable and worklike manner and would be performed pursuant to the rules, regulations, and standards promulgated by the insurance industry and LLOYD'S. Moreover, as fiduciaries to your Plaintiff, OAKELEY VAUGHAN UNDERWRITING LIMITED and its directors expressly and impliedly represented and warranted to your Plaintiff that it would not engage in overwriting practices in contravention of the requirements, rules and regulations as set forth by LLOYD'S and that Defendants, OAKELEY VAUGHAN UNDERWRITING LIMITED, its directors, and LLOYD'S would make full disclosure to your Plaintiff of all facts giving rise to, the fact of, or the conclusions of any inquiry by LLOYD'S into the affairs of OAKELEY VAUGHAN UNDERWRITING LIMITED, and its directors which would be detrimental or in conflict with the interests of your Plaintiff as a name of the syndicates in question as well as an underwriting member of LLOYD'S. Furthermore, LLOYD'S represented and expressly and impliedly warranted that they would properly regulate the affairs of the Defendants, OAKELEY VAUGHAN UNDERWRITING LIMITED and its directors and properly monitor the management of OAKELEY VAUGHAN UNDERWRITING LIMITED and its directors to insure that further violations of the rules, regulations, and requirements of LLOYD'S did not continue.

2. Your Plaintiff would further allege that each and every one of the representations set forth above concern material facts

for the reason that your Plaintiff would not have undertaken to subscribe to continue as a name on the syndicates in question nor continue in any type of relationship with OAKELEY VAUGHAN UNDERWRITING LIMITED, had your Plaintiff known about the falsity of said representations. Each and every one of said representations, both express and implied was relied upon by your Plaintiff to your Plaintiff's substantial injury and damage. In this connection, your Plaintiff would further allege that said Defendants purported to have and did have superior knowledge concerning the subject matter of the transactions and activities described above, and your Plaintiff justifiably relied upon said Defendants' superior knowledge. Plaintiff would further show that all of the representations both express and implied made by the Defendants referred to above were false and that when said Defendants made said representations, said Defendants either knew said representations were false or made the recklessly without any knowledge of the truth and made them as positive assertions. Your Plaintiff would further show that said representations were made with the intent of inducing your Plaintiff to enter the transactions referred to above. Thus relying upon the Defendants' false and misleading representations, your Plaintiff entered the transactions referred to above and would not have entered said transactions but for the Defendants' representations. By reason of your Plaintiff's reliance upon the representations described above your Plaintiff has received damages proximately caused by the fraud, deceit and misrepresentation on the part of said Defendants.

X.

1. Your Plaintiff would show that the unlawful acts and practices on the part of the Defendants described above are and were a producing and/or proximate cause of the damages to your Plaintiff. The purpose of this suit is to recover the amount of money which, if paid now in cash, would fairly and reasonably compensate your Plaintiff for such damages together with all punitive and exemplary damages assessed by a jury in this case. The amount of damages which should

be awarded to your Plaintiff as the result of the Defendants' unlawful acts and practices far above exceeds the minimal jurisdictional limits of the Court.

2. Plaintiff would further show that the undersigned attorney has been retained by the Plaintiff to pursue the causes of action alleged herein. Pursuant to the D.T.P.A., and the Texas Insurance Code all attorneys fees that are reasonable and necessary in this cause may be recovered by the Plaintiff. Moreover, based upon the Defendant's misrepresentations, unconscionable actions, breaches of contract and express and implied warranties, your Plaintiff is entitled to recover attorneys fees reasonable and necessary in this cause under Section 38.001 of the *Texas Civil Practices and Remedies Code*.

XI.

CIVIL CONSPIRACY

Defendants civilly conspired to either unlawfully conduct lawful acts, or to lawfully conduct the unlawful acts described within this Petition, including without limitation, defrauding JAY D. HIRSCH into becoming an underwriting member of LLOYD'S and the signing by JAY D. HIRSCH of the General Undertaking Agreement as well as other documents described herein and to be described throughout the discovery phase and trial of this cause.

Defendants are therefore jointly and severally liable to JAY D. HIRSCH for all actual damages proximately caused thereby, and all other charges and attorney's fees incurred by Plaintiff, plus pre-judgment and post-judgment interest thereon at the highest rate and for the periods prescribed by law. Defendants are additionally jointly and severally liable to Plaintiff for all exemplary damages found against each.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff, JAY D. HIRSCH, prays that the Defendants OAKELEY VAUGHAN UNDERWRITING LIMITED, CHARLES A. B. ST, GEORGE, JAMES C. B. ST. GEORGE, MARK E. P. ST. GEORGE, EDWARD ST. GEORGE, OAKELEY VAUGHAN

AND COMPANY LIMITED, and LLOYD'S be cited according to law to appear and answer herein, and that after final trial your Plaintiff have judgment against the Defendants for those damages described above and in the full amount allowed by law, together with court costs, pre-judgment interest at the legal rate, post-judgment interest; and further prays for the exemplary damages requested as well as additional and treble damages pursuant to Section 17.50 of the D.T.P.A. and Section 21.21 of the Texas Insurance Code; and further prays for attorneys fees that are reasonable and necessary in this cause as set forth above and for costs of court.

XII.

As additional relief hereunder, and pursuant to common law and Article 17.50(b)(2) and (3) of the D.T.P.A., your Plaintiff seeks a temporary restraining order and pending a hearing thereon a temporary injunction, enjoining ALLIED BANK OF TEXAS from honoring any demands made by the Defendant, LLOYD'S as a beneficiary of a letter of credit number 7675, or its advising bank, Defendant COUTTS & COMPANY and that on a hearing thereof the Defendant ALLIED BANK OF TEXAS and/or Defendant COUTTS & COMPANY be enjoined from disbursing any such funds or any part thereof during the pendency of any claims made by your Plaintiff against the Defendants set forth above and until full and final disposition of said claims and further that upon final disposition hereof said letter of credit number 7675 be in all things rescinded and cancelled. As grounds therefor your Plaintiff would show the Court the following, to-wit:

1. When elected as an underwriting member at LLOYD'S, Plaintiff was required to lodge as a deposit a letter of credit with LLOYD'S calculated on the premium income at a means deposit ratio. Thereafter, the Plaintiff was required to provide a letter of credit from ALLIED BANK OF TEXAS to be confirmed by the advising bank of LLOYD'S, the Defendant COUTTS & COMPANY OF LONDON. This requirement resulted in ALLIED BANK OF TEXAS issuance of a letter of credit number 7675, dated November 21, 1980 in

the amount of 70,000 pounds to expire on December 31, 1985. Said letter of credit was subsequently amended by proper amendments to the letter of credit to be increased by 37,055.50 pounds sterling to a total credit of 107,055.50 and subsequently amended to be decreased by the amount of 35,000 pounds sterling. This letter of credit was further amended to expire on December31, 1989. True and correct copies of said letter of credit with attached amendments have been attached hereto and incorporated herein as Plaintiff's Exhibit "A". These letters of credit are in essence obligations of the bank payable to LLOYD'S, Defendant via their advising bank, Defendant COUTTS & COMPANY available by a sight draft by LLOYD'S drawn on ALLIED BANK OF TEXAS.

2. As the result of the unlawful acts, conduct and practices on the part of the Defendants, OAKELEY VAUGHAN UNDERWRITING LIMITED, CHARLES A. B. ST. GEORGE, JAMES C. B. ST. GEORGE, MARK E. P. ST. GEORGE, EDWARD ST. GEORGE, and OAKELEY VAUGHAN AND COMPANY LIMITED and LLOYD'S described above, your Plaintiff, as a name on syndicates 420, 551 and 862 has incurred substantial losses and is currently being asked to pay very substantial sums to meet the claims and losses which have been incurred in the 1981 through 1983 accounts. By virtue of the above named Defendants' mismanagement of the syndicates in question, said claims and losses have resulted in deficits in the syndicate accounts. Your Plaintiff has now been notified by the Defendants to make good the deficit by cash calls and in the event cash calls are not made, then LLOYD'S will draw down on the deposits held by them on your Plaintiff's behalf by virtue of the letter of credit 7675 made payable to Defendant, LLOYD'S, as beneficiary thereunder.

3. In view of the threats of LLOYD'S to make demand for payment on letter of credit number 7675, it has been necessary to seek injunctive relief in addition to affirmative damages described above. Your Plaintiff would show this Honorable

Court that should the bank pay over any or all of the aforesaid monies to LLOYD'S, on LLOYD'S demand your Plaintiff would be in a position of not being able to recover any such sum advanced from the Defendants, OAKELEY VAUGHAN UNDERWRITING LIMITED, CHARLES A. B. ST. GEORGE, JAMES C. B. ST. GEORGE, MARK E. P. ST. GEORGE, EDWARD ST. GEORGE, and OAKELEY VAUGHAN AND COMPANY LIMITED and LLOYD'S, your Plaintiff would suffer immediate and irreparable harm and injury for which there is no adequate remedy at law. Further, if ALLIED BANK OF TEXAS should comply with LLOYD'S demand for payment of any or all of the said monies pursuant to letter of credit 7675, your Plaintiff would be obligated to pay the bank any and all sums of money which the Defendant, LLOYD'S would be able to draw down on said letter of credit. Further, by payment of the same your Plaintiff would be deprived of the use of said sums during the pendency of any cause of action to determine the rights of the parties.

4. For the harm and damage done to your Plaintiff, and for the harm and damage that will continue, but for the intervention of this Court, your Plaintiff in short has no adequate remedy at law and for these reasons, your Plaintiff asserts that the damage and harm to your Plaintiff which would result from the Defendants, LLOYD'S and COUTTS & COMPANY being able to draw down on letter of credit 7675 would be continuing in nature and culminate and manifest injustice to your Plaintiff.

5. On September 12, 1986, this Honorable Court entered an Order Granting Temporary Injunction as prayed for herein and in Plaintiff's Original Petition. This Order Granting Temporary Injunction is in full force and effect until further Order of the Court and a copy is attached hereto as Exhibit "C".

WHEREFORE, Plaintiff requests and prays that ALLIED BANK OF TEXAS be temporarily restrained and enjoined pending a hearing hereon, from honoring any demands by the Defendant, of LLOYD'S or its advising bank, the Defendant COUTTS

& COMPANY on the aforesaid letter of credit number 7675 and that on a hearing hereof the Defendant ALLIED BANK OF TEXAS be temporarily enjoined from dispersing any such funds or any part thereof; that all Defendants be cited to answer this Petition and Application for Temporary Restraining Order and Temporary Injunction; and that on final judgment hereof that said letter of credit number 7675 be in all things rescinded and cancelled and that your Plaintiff have all additional relief as previously prayed for herein together with all further relief, general or special, at law or in equity to which your Plaintiff may show himself entitled.

Respectfully submitted,

HIRSCH, GLOVER, ROBINSON
& SHEINESS

By: _____

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